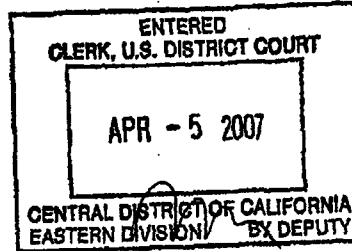
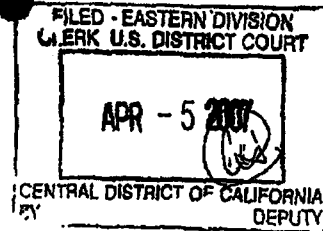


EXHIBIT G

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBERT HALF
INTERNATIONAL INC., a
Delaware corporation,

Plaintiff,

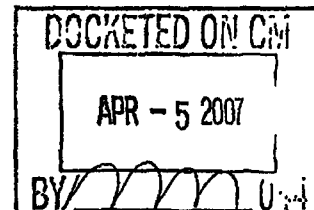
v.

MELINDA T. LE-COMPTE, an
individual; ELIZABETH M.
MURPHY, an individual;
PWC & ASSOCIATES, INC.,
a California
corporation; and DOES 1
through 10,

Defendants.

Case No. EDCV 07-201-VAP
(JCRx)

**ORDER DENYING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**



I. BACKGROUND

On February 20, 2007, Plaintiff Robert Half International, Inc. ("RHI") filed a Complaint alleging claims for misappropriation of trade secrets, breach of contract, and violation of the Computer Fraud and Abuse Act ("CFAA"), 18 U.S.C. § 1030, against its former employees, Defendants Melinda T. Le-Compte and Elizabeth M. Murphy, and their new employer, Defendant PWC &

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1 Associates ("PWC"). Simultaneously with the Complaint,
2 RHI filed an Application for a Temporary Restraining
3 Order and Order to Show Cause Why a Preliminary
4 Injunction Should Not Issue ("Application"). On February
5 26, 2007, the Court denied RHI's Application, construing
6 it as a Motion for Preliminary Injunction.

7
8 On March 19, 2007, after a round of expedited
9 discovery, RHI filed Supplemental Memorandum of Points
10 and Authorities in Supports of Its Application for a
11 Preliminary Injunction ("Pl.'s Supp."). On March 22,
12 2007, Defendants filed a Supplemental Opposition ("Defs.'
13 Supp.").

14 15 II. LEGAL STANDARD

16 The standard for a preliminary injunction ordinarily
17 balances the plaintiff's likelihood of success on the
18 merits against the relative hardship to the parties. See
19 Sun Microsystems, Inc. v. Microsoft Corp., 188 F.3d 1115,
20 1119 (9th Cir. 1999). In seeking a preliminary
21 injunction, a plaintiff meets its burden by demonstrating
22 either: (1) a combination of probable success on the
23 merits and the possibility of irreparable injury; or (2)
24 that serious questions are raised and the balance of
25 hardships tips sharply in its favor. Save Our Sonoran,
26 Inc. v. Flowers, 408 F.3d 1113, 1120 (9th Cir. 2005); see
27 also Fed. R. Civ. P. 65. These two formulations are not
28

1 separate tests but represent two points on a sliding
2 scale in which the required degree of irreparable harm
3 increases as the probability of success decreases. Clear
4 Channel Outdoor, Inc. v. City of Los Angeles, 340 F.3d
5 810, 813 (9th Cir. 2003).

6
7 "The critical element in determining the test to be
8 applied is the relative hardship to the parties. If the
9 balance of harm tips decidedly toward the plaintiff, then
10 the plaintiff need not show as robust a likelihood of
11 success on the merits as when the balance tips less
12 decidedly." Alaska v. Native Village of Venetie, 856
13 F.2d 1384, 1389 (9th Cir. 1988). A "serious question" is
14 one on which the movant has a "fair chance of success on
15 the merits." Sierra On-Line, Inc. v. Phoenix Software,
16 Inc., 739 F.2d 1415, 1421 (9th Cir. 1984). Generally,
17 the "balance of harm" evaluation should proceed the
18 "likelihood of success analysis," because until the
19 balance of harm has been evaluated the court cannot know
20 how strong and substantial the plaintiff's showing of the
21 likelihood of success must be. Alaska, 856 F.2d 1384,
22 1389 (9th Cir. 1988). Given that preliminary injunctions
23 are "an extraordinary and drastic remedy," courts refrain
24 from granting them unless the moving party carries the
25 burden of persuasion by a "clear showing." Mazurek v.
26 Armstrong, 520 U.S. 968, 972 (1997).

27 ///

28

III. DISCUSSION

RHI seeks to enjoin Defendants from: (1) using trade secrets that Defendants misappropriated from RHI; (2) soliciting business from or conducting business with any employer customer that was a customer of RHI while Defendants Le-Compte and Murphy worked there; or (3) placing any candidate employee who is identified in any RHI documents and with whom Defendants established contact through RHI. (Proposed Order Granting Preliminary Injunction at 4-5.) For the reasons set forth below, the Court denies Plaintiff's application for the requested injunction.

A. Irreparable Harm

In considering RHI's Application for a TRO, the Court found that the balance of hardships did not tip sharply in RHI's favor, largely because of the broad sweep of RHI's proposed order. (Minute Order dated Feb. 26, 2007 at 3-4.) RHI does not press this issue in its Supplemental Memorandum, and the proposed injunction here supports a similar finding.

RHI does contend, however, that it faces a possibility of irreparable harm if an injunction does not issue. (Pl.'s Supp. at 16.) According to RHI, this harm consists of its lost customer relationships and lost goodwill resulting from Defendants' unfair competition.

1 (Id.) Defendants respond that there is no evidence of
2 real or imminent injury to RHI's goodwill or customer
3 relationships. (Defs.' Supp. at 20.) Thus, Defendants
4 contend, RHI has an adequate remedy at law: money
5 damages.

6
7 As the Court indicated in its February 26, 2007,
8 Minute Order, if RHI prevails after a trial on the
9 merits, then RHI likely would receive both an injunction
10 preventing Defendants from doing business with any RHI
11 clients they solicited through the trade secrets and a
12 disgorgement of Defendants' profits from the relevant
13 period. Given the market statistics available to RHI, a
14 compensatory damages award would be quantifiable and
15 adequate. (See Declaration of Dylan W. Wiseman ("Wiseman
16 Decl."), Ex. I (Deposition of Carol Caldwell) at 35-46.)
17 Further, any purported injury to RHI's goodwill or
18 customer relationships is unsupported by more than bare
19 assertion,¹ and thus too speculative to support
20 injunctive relief. See Goldie's Bookstore v. Super. Ct.,
21 739 F.2d 466, 472 (9th Cir. 1984). Thus, RHI has not
22 made a "clear showing" that there is a possibility of
23 irreparable harm absent interim injunctive relief.

24

25

26 ¹ Although RHI elicited the testimony of Brett Good
27 at the hearing on this Motion, his testimony did not
28 establish that any goodwill was lost as a result of
Defendants' actions.

1 **B. Likelihood of Success on the Merits**

2 Even if RHI had demonstrated some possibility of
3 irreparable harm, it cannot satisfy its corresponding
4 burden of demonstrating a strong likelihood of success on
5 the merits.

6

7 **1. Trade Secrets Claim**

8 Both parties agree that the critical issue for this
9 claim is whether Defendants "solicited" customers with
10 the help of RHI's trade secrets. (See Pl.'s Supp. at 12;
11 Defs.' Supp. at 5.) "[M]isappropriation occurs if
12 information from a customer database is used to solicit
13 customers." MAI Sys. Corp. v. Peak Computer, Inc., 991
14 F.2d 511, 521 (9th Cir. 1993); Morlife, Inc. v. Perry, 56
15 Cal. App. 4th 1514, 1524 (1997) ("While California courts
16 have shown a reluctance to impose an unconditional
17 prohibition on doing business with customers of the
18 former employer, they have prohibited the unlawful use of
19 trade secrets to solicit those customers.").

20

21 In Morlife, the court noted that the California
22 Supreme Court defined "solicit" as "[t]o appeal to (for
23 something); to apply to for obtaining something; to ask
24 earnestly; to ask for the purpose of receiving." 56 Cal.
25 App. 4th at 1525 (internal citations and quotations
26 omitted). Merely "informing customers of one's former
27 employer of a change in employment, without more, is not

28

1 solicitation," however. Id.² The California Supreme
2 Court affirmed this distinction in 2004:

3
4 [A]lthough an individual may violate the UTSA
5 [Uniform Trade Secrets Act] by using a former
6 employer's confidential client list to solicit
7 clients, the UTSA does not forbid an individual
8 from announcing a change of employment, even to
9 clients on a protected trade secret client list.
10 As one decision explains, merely announcing a
11 new business affiliation, without more, is not
12 prohibited by the UTSA definition of
13 misappropriation because such conduct is basic
14 to an individual's right to engage in fair
15 competition.

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21 ²In Morlife, the defendants sent their former
22 employer's clients a letter with the following language
23 that the court described as "beyond merely announcing
24 [their] new affiliation and actively solicit[ing]
25 business for [the] new company[:]. . . . I've joined
26 forces with other roofing and general construction
27 professionals to bring you the next generation of roofing
28 companies.'" After describing the services offered, the
letter ends with, 'As always, you have my commitment to
provide you with timely, dependable, professional
solutions to alleviate your roofing problems. With rainy
weather on the doorstep, let's talk soon about how we can
prevent or minimize your headaches and costs.'" Id. at
1524 n.6. This stands in stark contrast with the
communications from Defendant Le-Compte in this case.

1 Reeves v. Hanlon, 33 Cal. 4th 1140, 1156 (2004) (internal
2 citations and quotations omitted).³ Here, RHI has
3 produced insufficient evidence that Defendants actively
4 solicited clients using its trade secrets. Although RHI
5 submits a chart purporting to show extensive contact
6 between Le-Compte and seventeen of her most active former
7 clients, an examination of the actual evidence of these
8 contacts reveals a lack of "active solicitation" as that
9 type of wrongdoing is defined under California law. (See
10 Defs.' Supp. at 10-18.)
11

12 For example, Client 6 responded to Le-Compte's
13 professional announcement of her new affiliation. Client
14 12 merely received the same announcement. Other clients
15 contacted Le-Compte after she sent them Thanksgiving
16 cards, including Clients 1 and 8. Le-Compte contacted
17 Client 7 in response to an advertisement that the client
18 itself had posted in the newspaper. Le-Compte's contact
19 with Client 3 is with a close friend who works for that
20 client, who after taking Le-Compte to breakfast on her
21 birthday broached the subject of an upcoming placement.
22 Clients 17 and 24 initiated the contact between
23 themselves and Le-Compte. Several of these clients
24 submitted declarations that they initiated the contact,
25 and Le-Compte did not solicit them. Other contacts were
26

27 ³Plaintiff's contention that Morlife holds or hints
28 that after enactment of the UTSA, even such notifications
may be unlawful (see Pl.'s Supp. at 12) thus lacks merit.

1 the product of referrals (Clients 15, 36), existing
2 relationships with PWC (Clients 4, 14), professional
3 networking (Clients 3, 5, 16), or outside social
4 functions (Clients 2, 9, 10, 13). Equity will not enjoin
5 these contacts, which are basic to any person's right to
6 engage in fair competition. Id.

7
8 **2. Breach of Contract Claim**

9 RHI's breach of contract claim is coextensive with
10 its trade secrets claim, because the nonsolicitation
11 provision of the employment contract here is only
12 enforceable to the extent that it protects RHI's trade
13 secrets from misappropriation. See Thompson v. Impaxx,
14 Inc., 113 Cal. App. 4th 1425, 1431 (2003) (reaffirming
15 that "nonsolicitation clauses are allowable only when
16 they protect trade secrets or confidential proprietary
17 information"). Thus, RHI likewise has not demonstrated a
18 strong likelihood of success on the merits of this claim.

19
20 **3. Computer Fraud and Abuse Act ("CFAA") Claim**

21 RHI has not demonstrated a strong likelihood of
22 success on the merits of its CFAA Claim. The CFAA civil
23 enforcement scheme contains a significant restriction,
24 one that likely bars RHI's recovery. See 18 U.S.C. §
25 1030(g) ("A civil action for a violation of this section
26 may be brought only if the conduct involves 1 of the
27 factors set forth in clause (i), (ii), (iii), (iv), or
28

1 (v) of subsection (a)(5)(B)."). Thus, RHI has not met
2 its burden on this claim.

3
4 Further, as indicated in the Court's Order to Show
5 Cause, this potential shortcoming in Plaintiff's CFAA
6 claim would divest the Court of subject matter
7 jurisdiction. This would also prevent Plaintiff from
8 obtaining any equitable relief from the Court.

9

10 **IV. CONCLUSION**

11 For the foregoing reasons, the Court hereby **DENIES**
12 Plaintiff's Motion for Preliminary Injunction.

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16 Dated: April 4, 2007

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Virginia A. Phillips
VIRGINIA A. PHILLIPS
United States District Judge